

ORDINANCE 50
AN ORDINANCE ENACTING TRIBAL FORCIBLE ENTRY AND
FORCIBLE AND UNLAWFUL DETAINER
(COMMERCIAL AND RESIDENTIAL)

1.1 Forcible Entry Defined: Every person is guilty of a forcible entry who either: (1) By breaking open windows, doors or other arts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) Who, after entering peaceable upon real property, turns out by force, threats or menacing conduct the party in actual possession.

1.2 Forcible Detainer Defined: Every person is guilty of a forcible detainer who either: (1) By force, or menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise ; or (2) Who, in the nighttime or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who for the five days next preceding such unlawful entry was in the peaceable and undisturbed possession of such real property.

1.3 Unlawful Detainer Defined: A tenant of real property for a term less than life is guilty of unlawful detainer, either:

(1) When he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specific term or period.

(2) When he having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant , after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in the manner in 1.4 provided) requiring him to quit the premises at the expiration of such month or period.

(3) When he continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in the manner in 1.4 provided) in behalf of the person entitled to the rent upon the person owing it, has remained un-complied with for the period of three days after service thereof. The notice may be served at any time after the rent become due.

(4)When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition of the lease or agreement under which the property is held, including any covenant not to assign or sublet, other than one for the payment or rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in the manner in 1.4 provided) upon him, and if there is a subtenant in actual possession of the premises, also such subtenant, shall remain un-complied with for ten days after service

thereof. Within ten days after the service of such notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagees of the tenant, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture.

(5) When he commits or permits waste upon the demised premises, or when he sets up or carries on thereon any unlawful business, or when he erects, suffers, permits or maintains on or about the premises any nuisance, and remains in possession after the service (in the manner provided in 1.4) upon him of three days.

(6) A person who, without the permission of the owner and without having color or title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing, is served upon him in the manner provided in 1.4.

1.3.5 Holding Over on Agricultural Land, Effect of: In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demands or notice to quit by his landlord or the successor in estate of his landlord, if any there be, shall be deemed to be holding by permission of this landlord or the successor in estate of him landlord, if any there be, shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

1.4 Services of Notice; Proof of Service: Any notice provided for in this chapter shall be served either: (1) by delivering a copy personally to the person entitled thereto: Or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some of suitable age and discretion and sending a copy through the mail addressed to the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence if not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner; provided, that in cases where tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered a subtenant within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Services of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent, or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent, or person can be found such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place when said premises are situated. Proof of any service under this section may be

made by the affidavits of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid; PROVIDED HOWEVER, that when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice.

1.5 Jurisdiction of Proceedings: The Tribal court shall have jurisdiction of proceeding under this chapter.

1.6 Parties Defendant: No person other than the tenant of the premises, and subtenant, if there be one, -in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be non-suited, for the non-joinder of any person who might have been party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

1.7 Complaint; Summons: The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence, which may have accompanied the said forcible entry or forcible or unlawful detainer, and claim damages therefore of compensation for the occupation of the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than six nor more than twelve days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

1.8 Summons; Contents; Service: The summons must state the names of the parties to the proceeding, the court in which the same relief sought and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned.

1.9 Writ of Restitution; Bond: The plaintiff at the time of commencing an

action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restriction restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the Tribal court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the writ of restitution having been issued, should the same be wrongfully sued out.

1.10 Service of Writ: Bond to Stay Writ: A court officer of assignee shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until the defendant has been served with summons in the action as herein above provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also the costs of the action. The plaintiff, his agent or attorney shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

1.11 Modification of Bond: The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondsmen maybe required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondsmen, and in the event the bondsmen shall fail or refuse to appear at such hearing and so answer such questions, the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and sheriff shall forthwith put the plaintiff in

possession of the premises.

1.12 Judgment by Default: If at the appointment in the summons the defendant does not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint.

1.13 Pleading by Defendant: On or before the day fixed for his appearance, the defendant may appear and answer.

1.14 Proof in Forcible Entry and Detainer: On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer.

1.15 Amendment to Conform to Proof: When upon the trial of any proceeding under this chapter it appears from the evidence that the defendant has been guilty of either a forcible entry of a forcible or unlawful detainer, in respect of the premises described in the complaint, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted on account of such amendment unless the defendant shows to the satisfaction of the court good cause therefore.

1.16 Amendments: Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and the same extent as in civil actions.

1.17 Judgment; Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon

the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment, no further writ for the premises shall be required.

1.18 Rules of Practice: Except as otherwise provided in this Ordinance, the provisions of the rules of this Tribe with reference to practice in civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such rules relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter.

1.19 Relief Against Forfeiture: The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, of full performance of conditions of covenants stipulated.

1.20 Appeal; Stay Bond: If either party feels aggrieved by the judgment he may appeal as in other civil actions; PROVIDED, that if the defendant appealing desire a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rents and other damages justly accruing to the plaintiff during the tendency of the appeal.

1.21 Effect of Stay Bond: When the defendant shall appeal, and shall file a bond as provided in section 1.20 above, all further proceedings in the case shall be stayed until the determination of said appeal and the same had been remanded to the trial court for further proceedings.

1.22 Writ of Restitution Suspended Pending Appeal: If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed, the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

1.23 Forcible Entry and Detainer; Penalty: Every Tribal member who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal, or officer shall afterwards return to settle or reside unlawfully upon, or take possession of such lands or possessions, shall be guilty of criminal trespass per Title 2 of the Tulalip Law and Order Code.

1.24 Attorney Fees and Costs: If the Tulalip Tribes of Washington institutes any suit or action under this Ordinance and its the prevailing party, then it shall be entitled to recover such sum as the court may adjudge reasonable as attorneys fees and costs at trial and on any appeal.

Legislative History

Adopted by Laws of February 4, 1984
Amended by Tulalip Reso. #87-0434, Laws of April 4, 1987
Approved, May 1, 1987, Superintendent, Puget Sound Agency

Related Laws